

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

Hang Zhang et al.

Serial No.: 09/496,600

Filed: February 2, 2000

For: METHOD AND APPARATUS FOR BROWSING A MANAGEMENT
INFORMATION BASE

Confirmation No. 6479

Group Art Unit No.: 2143

Examiner: Alina A. Boutah

Mail Stop Appeal Brief – Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPLICANTS' REPLY BRIEF ON APPEAL

Sir:

Applicants submit this brief in reply to the Examiner's Answer mailed July 11, 2007.

Pages 4-25 of the Examiner's Answer repeat the same rationale of prior Office Actions.

These arguments are fully addressed and traversed in Applicants' opening brief.

At page 26, the Examiner argues that certain points in Applicants' brief ("directly querying a router" and "the integration of an HTTP daemon into a packet router") are not recited in the rejected claims. Applicants disagree. Claim 1 recites "receiving at the network packet router an HTTP request message from the browser to obtain the current value of the MIB variable from the network packet router to which the MIB variable value pertains" and "communicating the current value of the MIB variable from the network packet router to which the MIB variable value pertains to the browser using an HTTP reply message." These claim features may be fairly characterized, in shorthand form for purposes of argument in a brief, as "directly querying a router" and "the integration of an HTTP daemon into a packet router." The

fact that Applicants' brief paraphrases the claims does not change the substantive, fundamental differences between the claimed approach and Krishnamurthy.

At pages 26-27, regarding the lack of a suggestion to combine the references, the Examiner's Answer recites cases setting out an appropriate standard, but does not address the substance of Applicants' argument—that the references do not provide teachings that would motivate a skilled artisan to invent Applicants' approach. The Examiner's Answer provides no *evidence* in the references that amounts to a sufficient motivation.

At page 27, the Examiner's Answer seeks to justify the use of hindsight in its conclusion of obviousness by contending that hindsight reconstruction of an invention from the prior art is allowed “so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure ...” (Examiner's Answer at 27). However, the Examiner's Answer does not address the *substance* of Applicants' argument—which is that the Examiner's position *is* based on knowledge from the Applicant's disclosure.

The Examiner's Answer and the prior Office Actions all view the cited prior art through the lens of Applicants' teachings. The Examiner could not have reached a conclusion of obviousness solely from the references, because the references do not show or suggest HTTP request-response capability in a router. The Examiner's reasons for combining the references are derived not from the references themselves, but from Applicants' disclosure; the reasons would not have occurred to a skilled artisan lacking Applicants' disclosure—and in fact, based on the present record, no skilled artisan did create the same thing as Applicants.

The Supreme Court has said that fact-finders must be aware of the distortion caused by hindsight bias, be cautious of relying upon it, avoid the temptation to read into the prior art the teachings of the invention, and guard against the use of hindsight. *KSR v. Teleflex*, 550 U.S. ___, 127 S.Ct. 1727 (2007) (slip op. at 17), citing *Graham v. John Deere & Co. of Kansas City*, 383 U.S. at 36 (1966), quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332

F.2d 406, 412 (6th Cir. 1964). While the Examiner's Answer appears to recognize the issue, the recognition comes too late, because the Examiner's rejections of the claims have been distorted by hindsight bias.

Based on the foregoing, it is respectfully submitted that the rejection of Claims 1-44 under 35 U.S.C. § 103 as unpatentable over *Krishnamurthy* in view of *Spofford* further in view of *Moeller* lacks the requisite factual and legal bases. Appellants therefore respectfully request that the Honorable Board reverse the rejection of Claims 1-44 under 35 U.S.C. § 103 over *Krishnamurthy* in view of *Spofford* further in view of *Moeller*.

Respectfully submitted,

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Date: September 9, 2007

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Pursuant to 37 C.F.R. 1.8(a)(1)(ii), I hereby certify that this correspondence is being transmitted to the United States Patent & Trademark Office via the Office electronic filing system in accordance with 37 C.F.R. §§1.6(a)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM Pacific time.

Submission date: September 9, 2007

by /ChristopherJPalermo#42056/